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FEDERAL COMMUNICATIONS COMMISSION  
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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 )  
Equal Access and Interconnection ) CC Docket No. 94-54  
Obligations Pertaining to ) RM-8012  
Commercial Mobile Radio Services )

To: The Commission

**REPLY COMMENTS OF PALMER COMMUNICATIONS INCORPORATED**

Palmer Communications Incorporated ("Palmer"), by its attorneys and pursuant to Rule Section 1.415, replies to the comments submitted with respect to the Commission's notice of proposed rule making and notice of inquiry, which proposes, among other things, imposition of equal access obligations upon cellular providers.<sup>1</sup> In support, the following is shown:

**I. Introduction.**

1. As Palmer indicated in its opening comments ("Comments"), it and its affiliates are diversified communications providers in the broadcast, common carrier and specialized mobile radio services ("SMR"). Specifically, Palmer holds a number of cellular and SMR licenses in the Southeastern United States. The Commission's proposals would thus have a direct adverse impact on Palmer's cellular operations, and more importantly on its customers. Palmer accordingly strongly disagreed with the Commission's tentative conclusion that cellular providers should be subject to equal access obligations, and showed that such action would be contrary to the public interest.

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<sup>1</sup> Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (July 1, 1994) ("NPRM").

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**II. The Record Continues to Lack any Basis to Force Equal Access Obligations Upon Cellular Providers.**

2. As Palmer's Comments demonstrated, the Commission's tentative conclusion to impose equal access obligations on cellular carriers is without sound public policy or historical justifications.

3. Apparently, a substantial basis for the Commission's tentative conclusion to impose equal access obligations on cellular was the theory that such obligations are somehow required in the interest of regulatory parity. NPRM at ¶ 3. Review of those comments seeking to support application of this requirement to cellular carriers confirms that the regulatory parity argument carries great weight. See Comments of BellSouth Corporation, et al. at 27; Comments of Bell Atlantic Companies at 4-5; Comments of New York Telephone Company et al. at 4. Although Palmer applauds efforts to treat similar classes of carriers similarly, its Comments correctly noted that the Commission's reliance on regulatory parity as a justification for imposing equal access obligations is misplaced. As other carriers have also recognized, equal access had its origins in the antitrust case which broke up the Bell System, not in the Congressional mandate for parity among

classes of carriers.<sup>2</sup> See Comments of Alltel Mobile Communications, Inc. at 2.

4. As numerous commentators point out, non-RBOC affiliated CMRS providers are not similarly situated to the RBOCs. Non-RBOC affiliated carriers lack market power and the potential for anticompetitive control over local exchange facilities that the RBOCs threatened without equal access. See Comments of Cox Enterprises, Inc. at 14; Comments of Cellular Telephone Industry Association at 8; Comments of Comcast Corporation at 21-24; Comments of McCaw Cellular Communications, Inc. at 6-8; Comments of Nextel Communications, Inc. at 5-6.

5. In addition, data concerning the presumed market power of cellular providers developed earlier in this proceeding in response to MCI's rulemaking petition, appears to influence strongly the Commission's tentative decision to impose equal access obligations on cellular carriers. Because of the rapid changes that have recently occurred in the wireless marketplace, however, this information is stale and no longer accurately reflects today's wireless marketplace. See Comments of GTE Service Corporation at 2-3. Indeed, as Palmer's Comments pointed out, Commissioner Andrew C. Barrett correctly noted that the "rationale for imposing equal

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<sup>2</sup> United States v. AT&T, 552 F. Supp. 131, (D.D.C. 1982), aff'd sub nom Maryland v. U.S., 460 U.S. 1001 (1983). As review of that proceeding conclusively shows, equal access was a specific remedy imposed on the former Regional Bell Operating Companies ("RBOCs") to address past anticompetitive conduct in their bottleneck control over local exchange facilities. It has nothing to do with the more recent concept that carriers providing similar service should be treated similarly from a regulatory standpoint.

access obligations in the context of "bottleneck facility" market power is not apparent here."<sup>3</sup>

6. In fact, today's wireless marketplace provides many sources of access to wireline local exchange networks and is becoming increasingly more competitive with the advent of ESMR and PCS. See Comments of CTIA at 8; Comments of GTE Service Corporation at 19-29; Comments of McCaw Cellular Communications, Inc. at 7; Comments of Rural Cellular Association at 4. Because of this increased competition, there is no need for the Commission to mandate equal access on cellular providers. Even if consumers were demanding equal access, which they are not, it should be competitive market forces that decide whether cellular operators provide the service, not a Commission requirement. See Comments of Dial Page, Inc. at 2.<sup>4</sup>

7. Comments filed by the RBOCs declaring the need for regulatory parity fail to support the imposition of equal access on independent cellular providers. One comment calls for mandated equal access to correct "regulatory inequities" in requiring only RBOC-affiliated cellular providers to provide equal access. See Comments of Bell Atlantic Companies at 4-5. However, these comments ignore the genesis of these so-called inequities in the

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<sup>3</sup> Separate Statement of Commissioner Andrew C. Barrett, Notice of Proposed Rule Making and Notice of Inquiry, CC Docket No. 94-54 (July 1, 1994).

<sup>4</sup> Palmer notes at least one comment filed in this proceeding postulates competitive forces will necessarily dictate the provision of equal access in the cellular/wireless marketplace. See Comments of American Personal Communications at 2.

greater inequities of anticompetitive conduct by the RBOCs in their control over local exchange facilities.

**II. Costs of Imposing Equal Access Outweigh Any Benefits.**

8. As Palmer's opening Comments explained, imposing equal access obligations on independent CMRS operators will correspondingly impose on them severe financial burdens. The expense of converting existing equipment, and implementing and maintaining new equipment and IXC software alone, will be high. Moreover, such expenses unfortunately are likely to lead to increased consumer costs. A review of the comments submitted by non-RBOC affiliated entities aptly point out that the costs associated with imposing equal access obligations vastly outweigh any potential public benefits. See Comments of American Personal Communications at 2; Comments of Cox Enterprises, Inc. at 14; Comments of Columbia PCS, Inc. at 2-3; Comments of Comcast Corporation at 33; Comments of Nextel Communications, Inc. at 10; Comments of Onecomm Corporation at 14-16; Comments of Rural Cellular Association at 6.

9. Similarly, the comments submitted by the RBOCs as to the costs of implementing equal access are unpersuasive. One RBOC who addressed the matter merely offers a bare assertion that the technical burdens of equal access are manageable and that there is no specific evidence in the Commission's record in Gen Docket No. 93-252 to justify CMRS providers' fears of difficulty or expense in implementing equal access. See Comments of Bell Atlantic Companies at 10-11. Those assertions are at best counterintuitive. Clearly

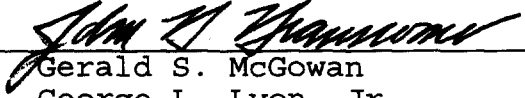
there will be costs of mandatory equal access. Ultimately, those costs will be borne by subscribers. Unless those subscribers actually get something more of value from equal access than the costs, they will be in a net loss position. The record of this proceeding must affirmatively show that subscribers will reap a benefit from equal access, or it should not be mandated. In its current state, the record does not justify mandated equal access.

### **III. Conclusion.**

10. As Palmer has shown above, regulatory parity is not a sufficient justification for imposing equal access obligations on independent cellular operators. Imposing equal access on only the RBOCs and its cellular affiliates originated as a court-formulated means to remedy the anticompetitive abuses of the pre-divestiture Bell System. Given the genesis of equal access, the Commission should not be swayed by the RBOC's claims of inequitable regulation. In other words, the Commission should not indulge the RBOC's "misery loves company" attitude. See Comments of Rural Cellular Association at 5. Accordingly, in light of the weight of the comments submitted in this proceeding, the Commission should abandon its tentative conclusion of mandating equal access obligations on cellular providers.

Respectfully submitted,

**PALMER COMMUNICATIONS INCORPORATED**

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